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OFFICE OF PETITIONS

DECISION ON PETITION

In re Application of
Cardosa et al.
Application No. 10/786,380
Filed: February 24, 2004
Attorney Docket No. 2316.2009-000

This is a decision on the petition filed July 15, 2004, requesting that the above-identified application be accorded a filing date of February 24, 2004. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience to applicants.

On February 4, 2004, applicants deposited the above-identified application. However, on May 13, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Nonprovisional Application," requiring, *inter alia*, drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification deposited on February 24, 2004, describes drawings containing Figures 1 and 2; however, it appears the United States Patent and Trademark Office (Office) did not receive any drawings on filing.

In response, applicants submitted the present petition, a second preliminary amendment to delete any reference to the figures, and a \$130.00 petition fee. Applicants assert that drawings are not necessary for the understanding of the subject matter sought to be patented in the above-identified application.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Nonprovisional Application" mailed May 13, 2004, was sent in error and is hereby withdrawn. The application will be accorded a filing date of February 24, 2004.

Accordingly, the petition is granted. The \$130.00 petition fee is unnecessary and will be credited to Deposit Account No. 08-0380.

The Office of Initial Patent Examination is directed to accord the application a filing date of February 24, 2004, with "0" sheets of drawings as part of the original disclosure.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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